

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6358 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHAIK KABIR SHAIKH MAHMAD                      SHAIKH

Versus

COMMISSIONER OF POLICE

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Appearance:

MS DR KACHHAVAH for Petitioner

SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/11/96

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 18.6.1996 passed by the Commissioner of Police, Ahmedabad. The petitioner has been detained on the ground that he is a bootlegger within the meaning of section 2(b) of the Gujarat Prevention of Anti-Social Activities Act (for short, 'the Act') and his alleged activities are prejudicial to the maintenance of public order.

2. This court, by order dated 27.8.1996 issued Rule returnable on 24.9.1996. No counter affidavit has been filed by the respondents. I have heard the learned Advocates for the parties and have also gone through the materials on record with the assistance of the learned Advocates.

3. It is contended by the learned Advocate for the petitioner that simply because certain cases have been registered against the petitioner under the provisions of the Bombay Prohibition Act, 1949, it cannot be said that the activities of the petitioner are prejudicial to the maintenance of public order. The learned Advocate relies on a decision of the Apex Court in the case of Piyush v. Police Commissioner, Ahmedabad, reported in AIR 1989 SC 491. In the said case, the Apex Court held that simply because the detinue is a bootlegger within the meaning of section 2(b) of the Act, it cannot be said that his activities as a bootlegger has adversely or likely to affect adversely the maintenance of the public order.

4. The present case is squarely covered by the said decision of the Apex Court. There is no material on record to show that the activities of the petitioner as a bootlegger has adversely affected or likely to affect adversely the maintenance of public order. In view of this the impugned order of detention deserves to be quashed and set aside.

5. In view of the aforesaid, this Special Civil Application is allowed. The order of detention dated 18.6.1996 is quashed and set aside and direct that the detinue be set at liberty forthwith unless required for any other case.

Rule made absolute accordingly.

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